

9 1059

Mr. Phillip S. Hughes
Assistant Director for
Legislative Reference
Bureau of the Budget
Washington 25, D. C.

Dear Mr. Hughes:

We have received your memorandum of February 10, 1959, transmitting draft bill and analysis of the proposed "Foreign Relations and Decorations Act of 1959."

As you may be aware, representatives of this Agency participated in the deliberations of the Interdepartmental Study Group which drew up the draft bill. We have no specific suggestions on the proposed legislation, in its present form, and we favor its introduction and passage.

Sincerely,

Legislative Counsel

STATINTL

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Back to [redacted]
not objectionable
State Dept Reis (State) say
State Discreased with
White House cont and to Congress
via Election Money.
[redacted] 26 Sept 60

CONCURRENCES:

[redacted]

Director of Personnel

2 March 59
Date

[redacted]

6 March 59

Letter to Mr. Phillip S. Hughes, Assistant Director for Legislative Reference, Bureau of the Budget

Distribution:

- O & I - Addressee
- 1 - Director of Personnel
- 1 - Director of Security
- 1 - Comptroller
- 1 - General Counsel - subject - Personnel 4-1
- 1 - OGC/ [redacted]
- 1 - LegCounsel w/basic
- 1 - LegCounsel (chrono)

OGC/LC/OEP/bjb/cmj (17 Feb 59)

STATINTL

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MEMORANDUM FOR: **THE DIRECTOR**

The attached memorandum concludes that the proposal to the Cabinet for legislation on foreign gifts and decorations is satisfactory to the Agency in its present form and recommends that the Cabinet Secretary be so informed.

Recommend approval.

S/ **Lawrence R. Houston**

LAWRENCE R. HOUSTON
General Counsel

L. K. WHITE

**Deputy Director
(Support)**

28 January 1959

(DATE)

FOR OFFICIAL USE ONLY

FORM NO. 101 REPLACES FORM 10-101
1 AUG 54 WHICH MAY BE USED.

(47)

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OGC 9-0158

28 January 1959

MEMORANDUM FOR: Director of Central Intelligence**SUBJECT: Proposed Legislation on Foreign Gifts and Decorations**

1. This memorandum contains a recommendation in paragraph 6 for approval of the Director of Central Intelligence.

2. The Office of General Counsel has participated in all of the deliberations of the Interdepartmental Study Group set up to consider the problem raised by the Constitution on acceptance of gifts and decorations from foreign governments. The solution recommended to the Cabinet is the proposed legislation in Annex A of the attached Cabinet Paper.

3. Very simply, this would give in advance the congressional approval required for acceptance of such gifts by Government employees. For gifts of no substantial intrinsic or resale value, the determination to retain the gifts could be made by an employee's superior officer with report thereof required to the head of the agency. Retention of decorations tendered for combat services or personal heroism can be approved by the head of the agency. Other gifts and decorations must go through a reporting and approval procedure before the gifts may be returned to the employee.

4. Our main contribution to the draft legislation was to add in certain places where the Secretary of State was named the words "or an official designated by him." It was understood that a proper official of this Agency could be such a designated official.

5. Section 7 requiring reports to the Congress in cases in which it has been determined that the gifts should be returned to the

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individual may cause some difficulty. Where security problems arise, either the determination to return the gift can be delayed or special arrangements for a classified report to the Congress may be made. The study group felt that such a reports requirement was essential to the legislation.

6. The proposed legislation has been coordinated with the Office of Personnel, which is handling the Agency's existing gift program under CIA Regulation [redacted]. It has also been explained to [redacted] who found it acceptable from the Deputy Director (Plans) point of view. I recommend informing Mr. Gray that this Agency supports the proposed legislation in its present form.

STATINTL

s/ Lawrence R. Houston

LAWRENCE R. HOUSTON
General Counsel

Att-Cabinet Paper, 26 Jan 59

The recommendation in paragraph 6
is approved

s/ C. P. CABEILL

ALLEN W. DULLES
Deputy Director

[redacted] advised

1/29/59 s/[redacted]

STATINTL
STATINTL

OGC advised s/Blp

OGC:LRH:jeb

Orig & rec-General Counsel w/ att
1-DCI w/o att
1-DDCI w/o att
1-ER w/o att
2-DD/S w/o att
1-Director of Personnel w/o att
1-Chief, I&R w/o att

Note orig and att filed in ER
General Counsel-subject-Personnel 4-1
- chrono -no circ

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Personne 4-1

January 21, 1959.

MINUTES

The Eighth (and final) Meeting of the Interdepartmental Study Group on Gifts was held on Tuesday, January 20, 1959, at 10:30 a. m. in Room 5106, New State Building, Washington, D. C.

The following were in attendance:

Ralph S. Roberts	Agriculture
Arthur B. Focke	Bureau of the Budget
[redacted]	CIA
John M. Swayze	Commerce
Robert T. Andrews	Defense
Edna Boorady	ICA
Harry A. Sellery	Justice
Arnold Zempel	Labor
Leon A. Dale	Labor
Hugo A. Ranta	Treasury
Scott Heuer, Jr.	USIA
John M. Carroll	White House
Richard B. Bilder	State
Loftus Becker, Chairman	State
Herbert Reis, Reporter	State

STATINTL

Five topics were discussed in some detail and agreement reached thereupon:

(1) The Group agreed to amend Section 2(a) of the Gifts and the Gifts and Decorations bills to read as follows:

"'Person' means any person who is appointed to a position in the Executive branch of the Government or is a member of the armed forces of the United States, its Territories and possessions, the Canal Zone Government, and the District of Columbia, including any department, agency, or establishment thereof."

(2) The Group agreed to include in its recommendation to the Cabinet that, following the enactment of legislation similar to the Gifts and Decorations bill, the Executive branch promulgate appropriate implementing regulations to the extent permitted by law. A further note of the desirability of deferring the drafting of such regulations would be made in the Report with respect to applicability of provisions of the bill to family members of persons covered by Section 2(a).

(3)

*New deliv.
After 1/21/59*

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(3) The Group agreed to provide the Gifts and Decorations Board with maximum flexibility by retention in the Report of the statement that the Board may in its discretion defer a given determination as to any gift or decoration and order the item held in custody.

(4) The Group agreed to the expansion of Conclusion 1(a) (ii) of the Report by stating in it that literal adherence to the requirement that all gifts without regard to nature or value be deposited would be difficult and burdensome to administer effectively.

(5) The Group agreed that the Report would be signed by Mr. Becker as Chairman.

A number of additional suggestions were made at the meeting. It was agreed that these would be taken into consideration in preparing the final Report

AGREED:

That Mr. Becker transmit clean copies of the Report, with Annexes, to the Secretary of the Cabinet.

STATINTL

L [] kg:1/22/59

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100-4659

MEMORANDUM FOR:

Loftus S. Becker
The Legal Adviser
Department of State

SUBJECT:

Draft of "Foreign Gifts Act of 1959" dated
15 September 1958

1. Receipt is acknowledged of Mr. Bilder's memorandum of 15 September 1958 enclosing second revision of the draft bill "Foreign Gifts Act of 1959" of the same date.
2. With respect to Sec. 5, it is suggested that "or an official designated by him" be amended to read "or such officials designated by him". In this connection we feel that it would be beneficial to give the Secretary latitude to designate more than one official, perhaps on an area basis.
3. We have no additional comments to make with respect to the draft bill.

ARMED

LAWRENCE R. HOLTZEN
General Counsel

OCC:OEP:bb

Distribution

Original & 1 - Addressees

- 1 - DD/S
- 1 - Office of Personnel attn. [redacted] w/copy of draft gifts bill
- 1 - Director of Security w/copy of draft gifts bill
- 1 - Legislative Counsel
- ✓ 1 - Subject Personnel w/copy of draft gifts bill
- 1 - Signer
- 1 - Chronc

STATINTL

MEMORANDUM FOR: John H. Raymond
Acting Legal Advisor
Department of State

SUBJECT: Draft of "Foreign Gifts Act of 1950" dated
27 August 1950

1. This is to advise that we agree with the statement contained in your letter of 20 August 1950 that subject draft is a workable compromise.
2. We feel that the proposed legislation, if adopted, will give the Department of State the flexibility it needs to adequately administer the problem of the disposition of gifts made by foreign governments to United States government employees.

5/10

[Redacted]
Acting General Counsel

STATINTL

OGC:OEP:bb

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DEPARTMENT OF STATE
WASHINGTON



August 29, 1958

In reply refer to:

L

STATINTL

Dear [redacted]

During the absence of Mr. Becker and in accordance with an agreement reached at the second meeting of the Interdepartmental Committee on Gifts on August 5, 1958, I am sending to you a copy of a second draft "Foreign Gifts Act of 1959".

The enclosed revision has been prepared in the light of comments received from members of the Committee. While it has not been possible in every case to adopt the suggestions made, I believe the attached revision represents a workable compromise.

I should appreciate receiving any comment you may wish to make.

Sincerely yours,

A handwritten signature in cursive ink, appearing to read "John M. Raymond".

John M. Raymond
Acting Legal Adviser

Enclosure:

"Foreign Gifts Act
of 1959".

STATINTL

[redacted]

Acting General Counsel,
Central Intelligence Agency.

DEPARTMENT OF STATE

WASHINGTON

August 39, 1958



In reply refer to:

L

STATINTL

Dear [redacted]

During the absence of Mr. Becker and in accordance with an agreement reached at the second meeting of the Interdepartmental Committee on Gifts on August 5, 1958, I am sending to you a copy of a second draft "Foreign Gifts Act of 1959".

The enclosed revision has been prepared in the light of comments received from members of the Committee. While it has not been possible in every case to adopt the suggestions made, I believe the attached revision represents a workable compromise.

I should appreciate receiving any comment you may wish to make.

Sincerely yours,

John M. Raymond
Acting Legal Adviser

Enclosure:

"Foreign Gifts Act
of 1959".

STATINTL

[redacted]
Acting General Counsel,
Central Intelligence Agency.

7 August 1958

MEMORANDUM FOR: Lortus E. Becker
The Legal Adviser
Department of State

SUBJECT: Gifts to Government Employees

1. At the meeting of the Interdepartmental Committee on Gifts held 5 August 1958, which was attended by [redacted] of this office it was requested that comment be made as to Sections 6, 7 and 8 of the draft of proposed law presented by the Department of State.

2. We suggest that part of the wording of Sec. 6. (d) be amended to read: ". . . by the affirmative vote of a majority of those present of either House" (Additional wording underscored.) Aside from the foregoing we suggest no changes in the proposed law other than those informally agreed upon at the meeting of 5 August 1958 with respect to Sections 1 through 5.

[redacted] STATINTL

Acting General Counsel

OGC:OEP:bb

Distribution

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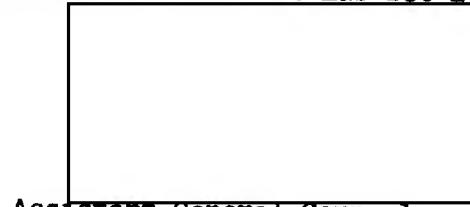
6 August 1958
(initials)

MEMORANDUM FOR THE RECORD

SUBJECT: Gifts to Government Employees

1. I attended the meeting of the Interdepartmental Committee on Gifts at the Department of State on 5 August 1958. State presented a substitute draft with explanatory memorandum, as an alternative to the Justice draft. Report of minutes of the meeting will be forwarded by State, who requested comments following which they will draw a new draft and call another meeting.
2. The attached memorandum has been prepared for signature.
3. Mr. Becker advised that the McClellan committee has set a deadline of 1 October 1958.

STATINTL



Assistant General Counsel

OGC:OEP:bb

Subject
Signer
Chrono

5 August 1958

STATINTL

MEMORANDUM TO: [REDACTED]

SUBJECT: Interdepartmental Committee on Gifts (From Foreign Governments)

1. This committee has been established to consider further the definition of Executive Branch policy of acceptance of gifts from foreign governments and to indicate the views of the Executive Branch with regard to appropriate legislation in this field.
2. Article 1, Section 9, Clause 8, of the Federal Constitution reads as follows: "No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or Foreign State." Section 115 of Title 5 of the U. S. Code reads: "Any present, decoration, or other thing which shall be conferred or presented by any foreign government to any officer of the United States, civil, naval, or military, shall be tendered through the Department of State, and not to the individual in person, but such present, decoration, or other thing shall not be delivered by the Department of State unless so authorized by act of Congress." || This latter provision dated back to 1881, and in 1902 acting Attorney General Hoyt rendered an opinion (24 Op. A. G. 116) strictly construing it as precluding the acceptance of a photograph of the Prince of Prussia. The Justice Department considers the 1902 ruling as still in effect (and so testified before the McClelland subcommittee when it looked into the Purse case). But State, in its Circular 277 of November 13, 1957, applied the rule de minimis to inconsequential gifts, allowing retention of them by the donee. Thus the committee will largely concern itself with the merits of the de minimis rule. STATINTL
3. Our regulation on Foreign Awards and Decorations, R [REDACTED] excludes from coverage gifts of insignificant intrinsic value, including token amounts of consumables or perishables.
4. We have primarily to consider our position on two aspects of the committee's activities: The general work toward recommending uniform executive policy and congressional action; and particular problems of the Agency with respect to gifts (Each member of the committee

has been asked to comment on this.). I recommend the following:

a. As to committee work in general, we are very interested and desire to make a real contribution. I personally favor the de minimis rule as being philosophically realistic and tending to prevent burdensome administrative preoccupation with trivia. We should, of course, watch the development of proposed legislation considered by the committee for anything that might prove inconvenient to us.

STATINTL

b. As to our particular problems, I do not think we should volunteer anything except perhaps the proposed R [] on Conflicts of Interest. Commerce has already supplied a copy of its comparable regulation. Agriculture, as well as State, has provided the committee with its regulation on the acceptance of gifts. You will note that proposed R [] makes reference to R [] which we could not make available to the committee without substantial deletion of sensitive material. Probably we should simply take the quiet, pleasant view that our extraordinary problems are pretty much taken care of by extraordinary legislation.

STATINTL

5. Attached is the following background material concerning the affairs of the committee:

- a. Memo to Committee members announcing today's meeting.
- b. List of members and participants.
- c. Transmittal memorandum of material sent to Mr. Houston by Mr. Becker's office.
- d. Minutes of the only previous meeting, which includes a brief sketch of the background of the committee formation.
- e. Draft bill prepared by Justice, together with a letter of transmittal to Congress, a memorandum explaining the bill, and a memorandum outlining the existing statutory provisions and past interpretation.
- f. State Department circular 277.
- g. Department of Commerce regulation, Conflicts of Interest.
- h. Department of Agriculture regulation, Acceptance of Gifts.

i. Proposed CIA regulation [redacted] Conflicts of Interest, STATINTL
together with related R [redacted] STATINTL

[redacted]
STATINTL
Office of General Counsel

STATINTL

OGC [redacted]:bb

Subject
Signer
Chrono

July 21, 1958

TO : The Honorable
Lawrence Houston
General Counsel
CIA

FROM : Mr. Richard Bilder RB
Office of the Legal Adviser
Department of State

SUBJECT : Interdepartmental Gifts Committee Material

Mr. Becker has directed me to send to you the attached material prepared by the Office of the Legal Adviser in connection with the work of the Interdepartmental Gifts Committee. This material consists of:

1. Minutes of the First Meeting, June 30, 1958;
2. Department of State Circular 277, November 13, 1957;
3. Letter from Marshall M. Smith, Commerce Department, July 3, 1958;
4. Letter from Ralph S. Roberts, Department of Agriculture, July 9, 1958.

I have requested Mr. Sellery of the Department of Justice (Code 197 - ext. 294) to send you certain material on this subject being prepared by the Department of Justice.

L:RBilder:imf

ASSISTANT ATTORNEY GENERAL

Approved For Release 2002/05/06 : CIA-RDP62-00631R000300040007-9

Department of Justice

Washington

July 21, 1958

Material re work of Inter-
departmental Committee on
Gifts.

Malcolm R. Wilkey
Assistant Attorney General
Office of Legal Counsel

Approved For Release 2002/05/06 : CIA-RDP62-00631R000300040007-9

MAILED

LITTLE TRANSMITTING DRAFT BILL

The Honorable
The Vice President
United States Senate
Washington, D. C.

Dear Mr. Vice President:

There is enclosed for consideration and appropriate reference a proposed bill "To amend section 3 of the Act of January 31, 1881," 21 Stat. 604, 5 U.S.C. § 115, relating to the tender of gifts and awards by foreign governments to officers of the Federal Government.

There is also enclosed an historical survey respecting gifts from foreign governments to officers of this Government. It shows that under the applicable provisions of the Constitution and the legislative precedents, statutory and other law, Congress has historically been of the view that the acceptance of any such gift is initially a matter for regulation by the Legislative branch.

That survey also refers to the Opinion of Acting Attorney General Hoyt in which it is said with respect to the constitutional prohibition that "it must be observed that even a simple remembrance of courtesy, which from motives of delicacy .

recognizes our policy, like the photographs in this case, falls under the inclusion of 'any present * * * of any kind whatever.'¹¹ 24 Op. Atty. Gen. 117 (1902). The survey also refers to the recommended standards or criteria which were submitted by Senator Elihu Root, a former Secretary of War and Secretary of State, on behalf of the Senate Committee on Foreign Relations for congressional consideration of requests for the acceptance of medals, gifts, and awards tendered to officers of the United States. Among those recommendations is one that "it may well be that as to certain trifling gifts * * * the rule of de minimis lex non curat should be deemed to apply." H. Rep. No. 373, 61st Cong., 2d Sess. (1910).

Congress has the power to provide for the application of such a rule to "a simple remembrance of courtesy." There is attached a proposed bill which would do so with respect to such gifts or presents and an explanatory memorandum for the proposed bill.

Under the procedure which would be provided by the bill, there would be two such categories of gifts, those without resale value, and those which may properly be classified de

minimis. Congress would give its consent to the acceptance of those without resale value upon the making of certain findings by the Secretary of State.

The Secretary of State would periodically report to Congress the tender of gifts which he classified de minimis. If, within 60 calendar days, a resolution is not passed by either House, stating in substance that that House does not favor the acceptance of one or more of such gifts, as the case may be, listed in such report, Congress would be deemed to have consented to their acceptance. Thus, Congress would still retain the power to withhold its consent to the acceptance of a trifling gift which may have some slight resale value in any instance in which it might choose to do so.

The procedure for gifts so reported would be similar to that under the Reorganization Act of 1949, 63 Stat. 205, 5 U.S.C. § 133z-4. The reporting procedures of the bill would not be applicable to tenders of gifts of intrinsic value or of orders, medals, and decorations.

Incredibly yours,

Enclosures

* There would be a similar letter to the speaker of the House of Representatives.

DRAFT

A BILL

To amend section 3 of the Act of January 31, 1881.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That section 3 of the Act entitled "An Act authorizing the persons therein named to accept of certain decorations and presents therein named, from foreign governments, and for other purposes" approved on January 31, 1881, is hereby amended to read as follows: "Sec. 3.(a) Any decoration, order, medal, present, or other thing, which shall be conferred or presented by any foreign government to any officer of the United States, civil, naval, or military, shall be deposited with the Department of State by the individual recipient, and such decoration, order, medal, present or other thing shall not be delivered by the Department of State unless so authorized by act of Congress:

Provided, That the individual recipient is authorized to accept from a foreign government and need not deposit with the Department of State any present or other thing which is inherently perishable or which is consumable and is incidentally tendered as an amenity of an official or social function.

"(b) The individual recipient is authorized to accept and the Department of State is authorized to deliver to him any present or other thing, including but not limited to, such an item as a photograph, which has been deposited as provided in subsection (a) hereof and with respect to which the Secretary of State makes findings that it has no apparent value for a sale thereof in the United States by the individual recipient and that there is no objection to its acceptance from the point of view of the foreign policy of the United States: Provided, That the provisions of this subsection (b) shall not be applicable to any decoration, order, or medal.

"(c) The Secretary of State is directed to transmit to each regular session of Congress a report, listing the name of the intended recipient for whom there is on deposit with the Department of State any present or other thing, excluding any decoration, order, or medal which may be so deposited, and excluding any present or other thing which has been delivered to such recipient under the provisions of subsection (b) hereof, the name of the donor governments, the specific reason for which it was tendered, and the name or title

or other identification or description of any such present or other thing with respect to which the Secretary of State makes findings that the rule of *de minimis lex non curat* should apply to its acceptance and that there is no objection to its acceptance from the point of view of the foreign policy of the United States.

"(d) Congress shall be deemed to have authorized the recipient officer to accept and the Department of State to deliver to him any such present or other thing respecting which such findings have been made in such report upon the expiration of the first period of sixty calendar days of continuous session of Congress following the date upon which such report is transmitted to it; but only if, between the date of transmittal and the expiration of such sixty-day period there has not been passed by either of the two Houses, by the affirmative vote of a majority of the authorized membership of that House, a resolution stating in substance that that House does not favor the acceptance of one or more or any, as the case may be, of such presents or other things respecting which such findings have been made in such report.

"(e) If any such resolution is passed, the Secretary of State may, in his discretion, omit from any later report which he may make pursuant to subsection (b) hereof the information therein specified with respect to any such present or other thing which may be included in the subject matter of any such resolution."

DRAFT

EXPLANATORY MEMORANDUM FOR PROPOSED BILL TO AMEND SECTION 3
OF THE ACT OF JANUARY 3, 1881, 21 STAT. 604, 5 U.S.C. § 115.

The proposed bill would provide a procedure for acceptance of gifts without resale value and periodic reports to Congress by the Secretary of State of the tender by a foreign government to an officer of the United States of gifts to which the rule of *de minimis lex non curat* may apply, and for ascertaining whether Congress consents to their acceptance. The application of this rule would exclude from such reports presents having more than a trifling intrinsic value.

Section 1 of the bill would reenact § 3 of the Act of January 3, 1881, 21 Stat. 604, 5 U.S.C. § 115, in substantially its present form as subsection (a) of § 3 of that Act. As amended by the bill there would be added to the word "decoration" the words "order" and "medal" to make the terminology employed in subsection (a) conform to that in the Act of June 27, 1934, providing for the periodic submission by the Secretary of State of a list of those retired officers for whom the Department of State, under the provisions of the 1881 Act, supra, is holding decorations, orders, medals, or presents tendered them by foreign governments, 48 Stat. 1267, 5 U.S.C. § 115a.

The bill would also add to § 3 of the 1881 Act, supra, as so amended, four additional subsections, (b), (c), (d), and (e).

Subsection (b) would authorize an individual recipient to accept and the Department of State to deliver any present or other thing with respect to which the Secretary makes certain findings. The finding that it is an item without resale value would make it unnecessary for any further action to be taken for its acceptance.

Subsection (c) would direct the Secretary of State to transmit to each regular session of Congress a report containing relevant data respecting the tender of any present or other thing with respect to which he makes certain findings. The finding that the rule of *de minimis lex non curat* should apply to its acceptance would provide uniform administrative determinations as to the classes of articles which are deemed to be of trifling intrinsic value.

The finding that there is no objection to the acceptance of any such gift from the point of view of the foreign policy of the United States would recognize the relationship between the acceptance of such gifts and the conduct of foreign affairs.

It must be assumed that the Secretary will follow the guidance of the President in making this latter finding. The provisions to subsections (b) and (c) would exclude therefrom a decoration, order, or medal.

Subsection (d) would contain provisions similar to those in § 6 of the Reorganization Act of 1949, 63 Stat. 205, 5 U.S.C. § 133z-4. Under subsection (d) by the passage of an appropriate resolution by either House, Congress would retain the power to decline to consent to the acceptance of one or more of the presents listed in any such report. If it considers that it need not exercise that power, at the end of the period of time specified Congress will be deemed to have consented to the acceptance by the recipient officer of any such gift from the donor government and to have authorized the Secretary of State to deliver it to him.

Finally, subsection (e) would give the Secretary of State administrative discretion to omit from or to include in a later report any trifling gift which had been previously reported and as to which Congress has previously indicated that it did not consent to its acceptance. There may be changing circumstances with respect to such matters.

To Members of the Interdepartmental Committee on Gifts

The reasons given in support of the proposals at the first meeting of the Interdepartmental Committee on Gifts that the draft bill should exempt from its reporting provisions gifts of small tokens with no resale value, and that it should authorize the head of the respective department or agency to make certain findings, would seem to raise the following questions:

1. Are the constitutional and statutory prohibitions respecting gifts applicable to enlisted personnel or a civilian employee?
2. If not, is the number of items of no resale value tendered as token gifts to military and civilian officers large enough to justify the proposed exemption for such gifts?
3. Is there a logical distinction between an item of no resale value and a decoration, order, or medal, which presumably has no resale value?
4. If the bill should provide an exemption for items of no resale value, do its provisions for reporting gifts ~~in minis~~ still have any real significance?
5. If the constitutional and statutory prohibitions respecting gifts are only applicable to military and civilian officers, is the number of such gifts large enough to impose an administrative burden on the Secretary of State in classifying them as items of no resale value or gifts ~~in minis~~?

There is attached a copy of a memorandum discussing these questions.

Malcolm R. Wilkey
Assistant Attorney General
Office of Legal Counsel

MEMORANDUM

Re: Draft bill re gifts from foreign governments

The constitutional prohibition respecting gifts from foreign governments in Article I, § 9, clause 8, is applicable to a "Person holding any Office of Profit or Trust under the United States. As set forth in the historical survey, it was held that a clerk of the fourth class in the Post Office Department, who is appointed by the head of that department and who receives a fixed compensation for performing continuing and permanent duties for an indeterminate term, is an inferior officer of the United States within the meaning of this prohibition. 27 Op. Atty. Gen. 219 (1900). This holding is principally based upon that doctrine as laid down in United States v. Hartwell, 6 Wall. 385 (1867), and other relatively early judicial decisions cited in that opinion.

Thereafter, in construing the applicability of the United States Employees Compensation Act to an Assistant United States Attorney, Attorney General Gregory concluded that the language in the Hartwell case simply held that a person in a particular position was an officer, not a mere employee, though called a clerk; that the method of appointment is not determinative of status as an officer or employee; and that the decisive question is whether a person "was appointed to himself perform some of the functions recognized by law as appertaining to an office, or only to render assistance to an officer in the performance of those functions. 31 Op. Atty. Gen. 201 (1918). See also 31 id. 184 (1917). Those later Opinions do not refer to the above-mentioned 1900 Opinion. Nevertheless, it is submitted that the effect of Attorney General Gregory's Opinions is to limit the holding in the 1900 Opinion.

Hence it would seem doubtful that the constitutional prohibition is applicable to a civilian employee, as dis-

tinguished from a civilian officer. 1/ It would likewise seem doubtful that it is applicable to enlisted personnel such as a Sergeant or Corporal participating in the training of the armed forces of a foreign government to whom it is said that small tokens are given by such government.

It will be recalled that § 1 of the Act of January 31, 1881, gives the consent of Congress to the acceptance by nine named persons of specified decorations and presents which had been tendered to them by foreign governments, 21 Stat. 603; that § 2 of that Act provides that no decoration or other thing which may be accepted, by consent of Congress, by "any officer" of the United States, from any foreign government, shall be publicly shown or exposed upon the person of the officer so receiving the same, 5 U.S.C. § 114; and that § 3 of that Act provides that any present, etc., which is presented by any foreign government to "any officer of the United States, civil, naval, or military" shall be tendered through the Department of State, and not to the individual, but shall not be delivered by that Department unless so authorized by act of Congress, 5 id. § 115.

Seven of the nine persons referred to in § 1 of the 1881 Act are there referred to by their ranks as commissioned officers of the U. S. Army or Navy; the eighth as a "General" and as "Superintendent of the Census"; and the ninth as a person in the "United States Revenue Marine," and apparently an officer aboard a government ship. The congressional debate on the 1881 Act does not discuss the classes of

1/ Contra: A person who receives pension payments from the British Government and who is appointed by a district judge under 28 U.S.C. § 755 may not be paid compensation for his services as a court cryer, 37 Comp. Gen. 140 (1957). This ruling mechanically applies the rule of the Hartwell case and the 1900 Opinion to reach that conclusion. It ignores the far more realistic views in Attorney General Gregory's Opinions in 1917 and 1918. In any event the decision of the General Accounting Office is applicable only to the Judicial Branch.

persons to whom it would be applicable, but solely the propriety of permitting any officer of the United States to accept an award or present from a foreign government, and, if so permitted, the propriety of permitting him to wear it in public. From the references to "any officer" and to "any officer of the United States, civil, naval, or military" in the prohibitions in the 1881 Act it would seem doubtful that they are applicable to enlisted personnel, such as a Sergeant or Corporal participating in the training of the armed forces of a foreign government, or to a civilian employee.

Before assuming that the constitutional and statutory prohibitions are, or may be, applicable to a non-commissioned or petty officer, it may be desirable to have the benefit of the views of the chief law officer of the Secretary of Defense on this question. In the case of civilian Government personnel, there may be a larger number of questions than in the case of military personnel as to whether a particular person is an officer or an employee. That circumstance would not, however, itself justify the proposed exemption for gifts of no resale value to the extent that it may be based on a failure to distinguish between a civilian officer and a civilian employee.

If enlisted personnel and civilian employees are eliminated in computing the number of persons to whom such small tokens are given, it may well be that the number of military and civilian officers receiving such tokens would not be so large as to justify the proposed subsection exempting items of no resale value; and, if it were omitted, would not constitute an administrative burden under the reporting requirements of the draft bill. Moreover, if the draft bill should provide such an exemption, it may be difficult to draw a logical distinction between such tokens and awards and decorations, which likewise have no resale value.

Indeed, if there is an exemption for items without resale value, there may be a question as to whether the provisions for gifts de minimis still have any real significance. If not, it would appear that the exemption for gifts of no resale value may, in practical effect, be the same as that for gifts de minimis in State Department Circular No. 277 which is contrary to the holding in Acting Attorney General Hoyt's Opinion in 24 Op. Atty. Gen. 117 (1902).

Finally, it seems possible that the proposed exemption for gifts without resale value may easily lead to unnecessary congressional controversy on the principle involved of advance congressional consent to such gifts as well as the distinction between gifts without resale value and gifts de minimis. If so, Congress may be reluctant to pass any bill on this subject, thus leaving the Executive Branch to resolve the problem created by the issuance of the State Department Circular.

There is also a question as to whether a gift should be classified de minimis by the head of the department of the officer to whom it is tendered or by the Secretary of State for all such officers. Theoretically the head of any department or agency could likewise make such a classification as to its officer personnel. In any event the Secretary of State would have to do so for State Department officer personnel.

The testimony of the Deputy Assistant Secretary of State for Operations is to the effect that there are now on deposit in the State Department some 200 packages of gifts tendered to officers of the several departments and agencies. If so, the possible burden on State in classifying all gifts de minimis may not be excessive. Furthermore, it will result in the application of a single set of criteria and thus produce what would seem to be desirable uniformity.

In addition, the Secretary of State is the only officer who can properly make the ultimate finding that there is no

objection to acceptance from the point of view of the foreign policy of the United States. For all these reasons it may be that the Department of State will recede from its objection to the requirement that State make the classification de minimis for the Government.

Attachment

MEMORANDUM

Re: Historical survey re gifts from
foreign monarchs and governments
to Government officers.

Article I, § 9, clause 8, of the Constitution provides as follows:

"No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or Foreign State." 1 U.S.C., p. XLI.

At the constitutional convention Charles Pinckney of South Carolina on August 23, 1787, urged the necessity of preserving foreign ministers and other officers of the United States independent of external influences. Thereupon this provision of the Constitution was adopted without discussion. 1/

The absence of any such discussion may, perhaps, be attributable to a generally comparable provision in the Articles of Confederation which were signed on July 9, 1777. It provided in pertinent part as follows:

"Article VI. No State without the consent of the United States in Congress assembled, shall send any embassy to, or receive any embassy from, or enter into any conference, agreement, alliance or treaty with any king, prince or state; nor shall any person holding any office of profit or trust under the United States, or any of them, accept of any present, emolument, office or title

1/ 3 James Madison, Papers 1408 (1840).

of any kind whatever from any king, prince or foreign state; nor shall the United States in Congress assembled, or any of them, grant any title of nobility. * * *¹ 1 U.S.C., p. XXX.

2/

The Articles of Confederation were finally ratified on March 1, 1781.

They were thus in effect when Benjamin Franklin returned home after serving for many years as the American minister plenipotentiary to France. Upon his departure King Louis XVI of France sent Franklin a gift. Franklin wrote to John Jay, Secretary for Foreign Affairs for the Continental Congress:

"I received from the King, at my departure, the present of his picture set round with diamonds, usually given to ministers plenipotentiary, who have signed treaties with that court, and it is at the disposition of Congress, to whom be pleased to present my dutiful respects."^{3/}

2/ This Article was so reported to the Continental Congress as Article IV of the proposed Articles of Confederation by the committee of the whole on August 20, 1776. 5 Journals of the Continental Congress 675 (Government Printing Office, 1906). It represents a slight revision of the proposed Articles of Confederation which were submitted on July 12, 1776, by a special drafting committee under the chairmanship of John Dickinson. Ibid. 547.

3/ 10 Benjamin Franklin, Works 223 (1840). "(But the gifts of kings are seldom quite free gifts. Franklin, as was expected of him, gave the official in charge of the present a gold snuffbox worth a tenth as much as the miniature, and fifty louis d'or to his assistant.)" Van Doren, Benjamin Franklin 722 (1938). By his will Franklin bequeathed the gift to him to his daughter. Ibid. 761. For an account of the circumstances preceding the consent of the Continental Congress in 1780 to the acceptance of a similar medallion by Arthur Lee of Virginia, see 1 Brant, James Madison 62-64 (1948).

At the Virginia debates on the ratification of the Constitution on June 15, 1788, Governor Randolph said with respect to this constitutional prohibition:

'This restriction is provided to prevent corruption. All men have a natural inherent right of receiving emoluments from any one, unless they are restrained by regulations of the community. An accident (sic) which actually happened operated in producing the restriction. A box was presented to our ambassador by the king of our allies. It was thought proper in order to exclude corruption and foreign influence, to prohibit any one in office from receiving or holding any emoluments from foreign states. I believe that if, at that moment, we had supposed that he was corrupting our ambassador, it might have disturbed that confidence, and diminished that mutual friendship, which contributed to carry us through the war.' 4/

Apparently he was referring to the farewell gift of Louis XVI to Franklin. A Virginia historian later wrote:

"Dr. Franklin is the person alluded to by Randolph. In the winter of 1856, in Philadelphia, under the roof of a venerable granddaughter of Dr. Franklin I saw the beautiful portrait of Louis XVI, snuff-box size, presented by that king to the doctor. As the portrait is exactly such as is contained in the snuff-box presented by Crowned heads, one of which I have seen, it is probable this portrait of Louis was originally attached to the box in question, which had with the lapse of years been lost or given away by Dr. Franklin."
5/

4/ 3 Elliott, State Debates on the Adoption of the Constitution 465-466 (1854). An examination of the index to The Federalist does not indicate that there was a discussion in The Federalist of the constitutional prohibition respecting gifts from foreign governments.

5/ From H. B. Grigsby, History of the Virginia Federal Convention of 1788, contained in 9 Virginia Historical Society Collections (New Seaport v344 For Release 2002/05/06 : CIA-RDP62-00631R000300040007-9

This statement may explain whatever uncertainty there may be as to whether the gift to Franklin was a medallion or a portrait affixed to the top of a snuff box. In view, however, of the restriction in the Articles of Confederation on the acceptance by officers of the American Revolutionary Government of gifts from foreign governments, there would seem to be some question as to whether the generally comparable restriction in the Constitution is due solely to the gift of the King of France to Franklin.

On January 6, 1834, President Jackson sent a special message to Congress stating that it appears that the United States consul at Tangier--

"has been induced to receive from the Emperor of Morocco a present of a lion and two horses, which he holds as belonging to the United States. There being no funds at the disposal of the Executive applicable to the objects stated by Mr. Leib /the consul/, I submit the whole subject to the consideration of Congress for such direction as in their wisdom may seem proper." 3 Richardson, Messages and Papers of the Presidents 37 (1896).

The House Committee on Foreign Affairs proceeded to investigate the matter. In asking to be discharged from further consideration of the matter, it made the following report:

"The President adds that he had directed instructions to be given to our ministers and agents abroad requiring them to abstain in future, unless the consent of Congress shall have been previously obtained, from the acceptance of presents, under any circumstances, from foreign States; and founding himness (sic) on the supposed effect of these instructions, to prevent the acceptance of presents hereafter, he invites the attention of Congress to those which have been heretofore made to public officers, and deposited by the orders of the Government in the Department of State. He represents these as useless, and their custody as attended with inconvenience, on which account, and on the ground that the constitutional provision in relation to their acceptance may be regarded as satisfied by the surrender of the

articles to the Government, he recommends the disposal of them to the original donees, or the representatives of such as are deceased.

"The Government of the United States is the only one known to lay its agents employed in foreign intercourse under strict interdiction as regards the acceptance of presents in any form. This interdiction being in the constitution, could derive no increase of notoriety, more than authority from instructions to our agents abroad. Instructions have probably been given, however, at the earliest period ascertained of the Government, and were certainly given in the year 1817, as will appear from a document appended to this report.

"The acceptance of presents has, notwithstanding, taken place, on several occasions, and under circumstances, which the committee are not prepared to say should not exempt this conduct from censure. In all others than the Christian States of Europe, (and in these to a greater or less extent,) the interchange of presents between the authorities and foreign agents is not only matter of invariable usage, but an established form of respect; the breach of which, by refusal of acceptance on the part of the foreign agent, would furnish an occasion of resentment, compromising oftentimes the efficacy of the agency, or it might be even the official immunities or personal security of the agent. The last instances of the acceptance of presents by our agents abroad, have been explained by considerations of this nature. In the case of the horses received by the commissioner of the United States from the Ottoman Porte, &c., this officer alleged the fear that the important commercial interests we were seeking at that time to adjust and confirm, would probably have been suspended by his adherence to the constitutional restriction. Mr. Jefferson, when President, did not refuse a similar present, made directly to himself, and could only have been influenced by similar inducements. In the present instance, the consul

alleges that 'the present could not be declined without the greatest insult to an Eastern Sovereign.' Acceptance has never, in any case, in which it has occurred, been the result of want of knowledge or recollection of the constitutional prohibition. As regards the disposal of the presents in the cases alluded to, as of former occurrence; in the first, Mr. Jefferson, without any reference to Congress, ordered the horses to be sold, and the money put into the Treasury. In the second, that of the horses presented by the Ottoman Porte, this committee expressed an opinion in asking to be discharged from the consideration of the message of the President on the subject, that the precedent in Mr. Jefferson's Presidency furnished a sufficient guide to the Executive. In conformity to this opinion, the horses were sold under order of the Executive in this last case also, and the money applied in discharge of the expenses which had been incurred in their transportation to the United States, and maintenance. As the horses in the present case are represented as fine, the proceeds of their sale may be expected to produce a fund adequate, at least, to meet expenses. The committee are of opinion, therefore, that the same course should be pursued in this, as the former instances to which allusion has been had, and report accordingly.

"As regards the recommendation of the President, that the presents deposited in the State Department should be delivered to the original donees, or the representatives of the decedents, the committee, on consideration of the subject, are not disposed to take the same view. They find, on recurring to a list and estimate of the probable prices of these presents, that only a few of them would be of pecuniary value to the receivers, if the President's recommendation were complied with, and they apprehend that the barriers set up by the constitutional inhibition, as regards the acceptance of presents, might possibly be weakened by this course of procedure. The foreign agents of the Government might be led to look with more facility on the considerations which may excuse a departure from the strict line of restraint imposed by the Constitutional obligation. As regards a considerable proportion of the articles in question too, it appears that the names of the donors and depositors have not been preserved; so that the recommendation could not be carried into effect."

the inconvenience from the custody of the articles, which seems to have been a principal inducement to it, obviated or relieved."

* * *

"Extract from instructions of J. Q. Adams, Secretary of State of the United States, to R. Rush, Envoy Extraordinary and Minister Plenipotentiary of the United States at London, dated

'Washington, November 6, 1817.

"A custom prevails among the European Sovereigns, upon the conclusion of treaties, of bestowing presents of jewelry, or other articles of pecuniary value, upon the minister of the Power with which they were negotiated; the same usage is repeated upon the minister's taking leave at the termination of his mission. In Great Britain it is usual to offer the minister, at his option, a sum of money, graduated according to his rank, or a gold box or other trinket of equal value. The acceptance of such presents by ministers of the United States is expressly prohibited by the constitution; and even if it were not, while the United States have not adopted the custom of making such presents to the diplomatic agents of foreign Powers, it can scarcely be consistent with the delicacy and reciprocity of intercourse between them, for the ministers of the United States to receive such favors from foreign Princes, as the ministers of those Princes never can receive from this Government in return. The usage, exceptionable in itself, can be tolerated only by its reciprocity. It is expected by the President, that every offer of such present which may, in future, be made to any public minister or other officer of this Government, abroad, will be respectfully, but decisively, declined.'

"(Circular)

"Department of State,

"Washington, January 6, 1834.

"Sir: I am directed by the President to instruct the ministers, consuls, and other diplomatic and commercial

agents of the United States, that it is required of them that, in future, they will not, unless the consent of Congress shall have been previously obtained, accept, under any circumstances, presents of any kind whatever, from any King, Prince, or foreign State.

6/
"You will therefore govern yourself accordingly."
H. R. Rep. No. 302, 23rd Cong., 1st Sess. 1-4 (1834).

Attorney General Cushing expressed the opinion that the constitutional provisions forbade a United States Marshal in Florida from acting as Commercial Agent of France. 6 Op. Atty. Gen. 409 (1854). See also 13 id. 537 (1871).

Apart from any other instructions which may have been issued from time to time by the President or the Secretary of State, and any restrictions which may have been contained in any early appropriation acts, the first statutory restriction on the acceptance of gifts from foreign governments appears in the Act of August 18, 1856. It was an Act to regulate the diplomatic and consular systems of the United States which became effective by its own terms on January 1, 1857.

Section 19 provides in pertinent part as follows:

"Nor shall any diplomatic or consular officer * * * ask or accept for himself or any other person, any present, emolument, pecuniary favor, office, or title of any kind from any such foreign government".
11 Stat. 59.

In the Congressional Globe there is no report of any debate on this Act. This provision was retained when § 19 of this Act was amended in other respects by the Act of June 17, 1874, 18 Stat. 77. See also Rev. Stat. § 1751 (1878 ed.).

Section 1 of the Act of January 31, 1881, gives the consent of Congress to the acceptance by nine named persons of specified

6/ With respect to the reference to the horses presented by the Ottoman Porte, see H. R. Rep. No. 107, 21st Cong., 2d. Sess. (1831).

decorations and presents which had been tendered to them by foreign governments. Section 3 provides as follows:

"Any present, decoration, or other thing which shall be conferred or presented by any foreign government to any officer of the United States, civil, naval, or military, shall be tendered through the Department of State, and not to the individual in person, but such present, decoration, or other thing shall not be delivered by the Department of State unless so authorized by act of Congress." 21 Stat. 604, 5 U.S.C. § 115. 7/

Thereafter Acting Attorney General Hoyt expressed the opinion that it would not be sound to hold that a titular prince, even if not a reigning potentate, is not included in the constitutional prohibition, and that the words "or other thing" in the 1881 Act, supra, would preclude the acceptance by an American military or civil officer of a photograph of Prince Henry of Prussia, a brother of the Emperor of Germany and King of Prussia. The Attorney General observes that the constitutional provision "has been viewed as particularly directed against every kind of influence by foreign governments upon officers of the United States, based on our historic policies as a nation." 24 Op. A. C. 116, 117 (1902). Attorney General Wickersham construed the constitutional prohibition as extending to a clerk of the fourth

7/ See also United States Consular Regulations § 421 (1888), Ibid. § 451 (1896 with amendments to 1919). And see § 1002 of the Foreign Service Act of 1946 which provides in pertinent part as follows:

"An officer of the Foreign Service of the United States shall not ask or, without the consent of the Congress, receive for himself or any other person, any present, emolument, pecuniary favor, office or title from any foreign government. * * *!
60 Stat. 1030, 22 U.S.C. § 804.

class in the Post Office Department, stating that he was an inferior officer of the United States, 27 id. 219 (1900). 8/

The Act of June 27, 1934, gave the consent of Congress to the acceptance of certain decorations and gifts by certain named retired officers of the Executive Branch and by a named member of the Legislative Branch. It also provides that the Secretary of State shall submit to each alternate Congress a list of those retired officers or employees of the United States for whom the Department of State, under the provisions of 1881 Act (5 U.S.C. § 115), is holding decorations, orders, medals, or presents tendered them by foreign governments, 48 Stat. 1267, 5 U.S.C. § 115a.

By Executive Order No. 7577 dated March 19, 1937, it is provided that "American ~~and~~ diplomatic and consular officers are hereby prohibited from accepting in any circumstances any present, decoration, or medal, order, testimonial, or other thing that may be tendered to them by any foreign king, prince, or foreign state," 2 Fed. Reg. 572. A similar prohibition is incorporated in § I-23 of the amendments to the foreign service regulations which were made in Executive Order No. 8396, dated April 18, 1940, 3 CFR 134 (1940 Supp.). Finally, by Executive Order No. 9521 dated February 13, 1945, the previous limitations on the

8/ But see the holding that the constitutional prohibition is not applicable to a part-time employee of the Geological Survey who does not take an oath of office, 28 id. 598 (1911). Other diplomatic precedents, both earlier and later, are collected in 4 Hackworth, Digest of International Law 475-485 (1942). The Acting Secretary of State advised the American Embassy in Chile that the prohibition against the acceptance of foreign decorations does not apply to wives of officers of the United States, Ibid. 481. But see § 5 of Department of State Circular No. 277 of November 13, 1957, stating that "Gifts to close relatives of members of the Department or the Foreign Service should be treated in the same way as gifts to such members."

authority of the Secretary of State to prescribe regulations relating to the duties of officers and employees of the Foreign Service and the transaction of their business were revoked, and he was authorized to substitute therefor his regulations, 3 CFR 365 (1943-1948 Compilation). 9/

The currently applicable regulations of the Secretary of State with respect to such matters are as follows:

"030 Definitions

* * *

"Employee: Either an officer or an employee." 4 Foreign Service Manual 030 (p. 1)

"625 Acceptance of Gifts, Titles and Emoluments

"625.1 Gifts From Foreign Governments

"No American employee shall accept any decoration, gift or emolument of any kind from any foreign sovereign, foreign government, or from any state, province, or municipality, or from any governmental or semi-governmental agency, or from any international organization of states, notwithstanding the fact that the United States is a participant in such international organization. Moreover, to assure absolute equality and uniformity in this regard, no American employee shall ever wear any foreign decoration while serving in such capacity.

9/ This Executive Order provided for the revocation inter alia of Executive Order No. 8396, supra, as of the date of issuance of the orders or regulations of the Secretary of State that cover the subject matter. He is directed to designate in his order or regulation the parts of an Executive Order which is intended to be superseded by such order, and to publish such order or regulation in the Federal Register. Ibid. 366. No research has been made as to whether any such notice has been published in the Federal Register with respect to § I-23 of the foreign service regulations in Executive Order No. 8396, supra.

"625.3 - Refusal of Gifts from Foreign Government

"When it is necessary for an employee to refuse, or on his own behalf or on behalf of some other person, any decoration, gift or emolument offered by a foreign government, the refusal shall be made in as gracious terms as possible, attention being invited to the fact that acceptance is prohibited under the laws of the United States. Employees shall take such precautionary measures as seems advisable to avoid being placed in a position where it becomes necessary to refuse such decoration, gift or emolument from a foreign government."

4 Foreign Service Manual 625.

From time to time Congress has granted a general consent for the acceptance within a specified period of time by American citizens and personnel of the Armed Forces of medals or decorations tendered to them by foreign governments in connection with armed conflicts in which the United States was a participant. For such consent with respect to World War I, see the Act of July 9, 1918, 40 Stat. 845, 872, 10 U.S.C. §§ 1422 and 1423; and with respect to World War II, see the Act of July 20, 1942, which also gave consent to the acceptance of decorations, orders, medals, and emblems from the governments of the other American Republics, 56 Stat. 662, 10 U.S.C. § 1423(a). 10/ Section 29(d) of the Act of August 10, 1956, provides that when a member of the Reserve is not on active duty or active training duty he is not considered to be a Government officer or employee or a person holding an office of trust or profit or discharging any official function under or in connection with, the Government

10/ It is understood that General Vaughan, a member of President Truman's staff, accepted an award from President Peron of Argentina under this provision on the ground that World War II had not then been terminated. But see also S. 3195, 85th Cong., which would authorize certain retired personnel of the United States Government to accept and wear decorations, presents and other things tendered them by certain foreign governments. There is included therein an award to General Vaughan by the Government of Argentina of the Order of General San Martin.

in that capacity, 70A Stat. 632, 5 U.S.C. § 30r(d). Despite the broad language used, it may be noted that the legislative reports on the predecessor statutes indicate that these statutes were enacted to except such Reserve personnel from the possible application of the conflict-of-interest laws, the dual compensation and employment statutes, and various State constitutional prohibitions against the holding of State office by Federal personnel. See S. Rep. No. 1102 and H. R. Rep. No. 1884, 71st Cong., 2d Sess. (1930) and S. Rep. No. 1795, 82d Cong., 2d Sess. (1951) and H. R. Rep. No. 1066, 82d Cong., 2d Sess. (1952).

Under the Act of July 9, 1952, Congress has authorized the Secretary of the appropriate military department to approve the acceptance by Reserve personnel of civil employment by foreign governments, 66 Stat. 495, 10 U.S.C. § 1032. Its enactment would suggest that Congress considered that even an inactive reserve officer would otherwise be subject to the constitutional prohibition. If so, it would corroborate a view that the broad language in 5 U.S.C. § 30r(d) does not authorize an inactive reservist to accept a gift or award from a foreign government.

Requests for the consent of Congress for the acceptance of medals, gifts and awards tendered to certain officers of the United States by foreign governments were considered by the Senate Committee on Foreign Relations in 1910. The report was submitted on behalf of the Committee by Senator Elihu Root, a former Secretary of War and Secretary of State.

Referring to the pendency of 200 such requests, the report made the following observations:

"It seems that requests of this character should be passed upon in accordance with some declared principle of action, so that one officer should not have his request refused and another receive authority as the result of accidental circumstances attending the presentation of the request.

"The existence of the prohibition in the Constitution indicates that the presumption is against the acceptance of the present, emolument, office, or title. A habit of general and indiscriminate consent by Congress upon such applications would tend practically to nullify the constitutional provision, which is based upon an apprehension, not without foundation, that our officers may be affected in the performance of their duties by the desire to receive such recognition from other governments. A strong support for the view that the practice should not be allowed to become general is to be found in the fact that the Government of the United States does not confer decorations or titles or, unless in very exceptional cases, make presents to the officers of other governments. It is not suitable that we should permit our officers to receive courtesies which we do not reciprocate by extending similar courtesies to the officers of other governments. We are of the opinion that the following rules should be observed:

"1. That no decoration should be received unless possibly when it is conferred for some exceptional, extraordinary, and highly meritorious act, justifying beyond dispute a special mark of distinction.

"2. That no presents should be received except such articles as are appropriate for souvenirs and marks of courtesy and appreciation and having an intrinsic value not disproportionate to such a purpose.

"3. That the acceptance of presents within the limitation above stated should be further limited to cases in which some exceptional service or special relation justifying the mark of courtesy exists between the recipient and the government offering the present.

"4. That no offer of any other title or emolument or office should be considered.

"5. We consider that membership in learned societies, even though the appointment thereto may have a quasi governmental origin, should not be considered as coming within the constitutional provision, and it may well be that as to certain trifling

gifts, such as photographs, the rule of de minimis lex non curat should be deemed to apply." S. Rep. No. 373, 61st Cong., 2d Sess. (1910). 11/

The bill in question was passed by the Senate, but died in the House. The standards of criteria in the report submitted by Senator Root may, however, be of interest to the Senate Committee on Government Operations. On November 27, 1957, Assistant Attorney General White informed the Committee Chairman that there had been no change by this Department in its interpretation of the 1902 Opinion, supra.

There have been issued the President's Memoranda of January 6, 1950, and April 13, 1954, to the Heads of Executive Departments and Establishments, respecting the procedure for the periodic submission by the Secretary of State to Congress of an omnibus bill respecting the consent of Congress to the acceptance of medals and other gifts to Government officers and employees which have been tendered by foreign governments. These Memoranda are not published in the Federal Register.

11/ Reproduced in 45 Cong. Rec. 3182-3186 (1910).

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52-10000
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RA-105

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CP - 58-80

May 16, 1958

The White House
Washington

THE CABINET

Gifts from Foreign Governments

The attached approved paper is circulated for action by
the Secretary of State and those agencies concerned, and for
information to the other members of the Cabinet.

This paper was approved by the President at the Cabinet
meeting of Friday, May 16, 1958 (RA - 58-105, Item 2).

Robert K. Gray
Secretary to the Cabinet

CABINET PAPER
For Action

CABINET PAPER—PRIVILEGED CP - 58-80

Property of the White House—For Authorized Persons Only May 16 ,1958

The White House

Washington

THE CABINET

Gifts From Foreign Governments

Problem

To determine how a uniform policy and uniform procedures may best be achieved for the disposition of the various categories of gifts which may be tendered by foreign governments to officers of the Executive Branch of the United States Government.

Discussion

The Constitution prohibits officers of the United States from accepting gifts "of any kind whatever" from foreign governments "without the Consent of the Congress."

An 1881 statute provides that any such gift "or other thing" shall be tendered through the Department of State and shall not be delivered to the recipient unless authorized by Act of Congress. This statute is applicable to Government Officers but not to members of their families.

In 1902 the Acting Attorney General of the United States rendered an opinion to the Secretary of State that "even a simple remembrance of courtesy... like the photographs in this case" falls within the Constitutional prohibition (24 Op. Att. Gen. 116, 117). A fourth class clerk in the Post Office Department is an officer of the United States within the meaning of this prohibition (27 Op. Att. Gen. 219).

The policy of the Department of State regarding such gifts has been recently set forth in Departmental Circular 277 of November 13, 1957 (which, with its attachment, forms Annex A to this paper).

This policy statement specifies that "the ... provisions of the law and regulations are to be interpreted with due regard for the principle 'de minimis non curat lex' - the law does not concern itself with things which would universally be regarded as too unimportant to come within its scope. Accordingly, where there is no indication of improper interest, and refusal or return would be offensive and might injure good international relations, such a gift may be received. If it has only minor intrinsic value, such as a photograph or other like memento or souvenir, it may be retained."

The Chairman of the Committee on Government Operations of the U. S. Senate has written the President stating that "there should be unanimity of procedure and policy throughout the Executive Branch, and I recommend for your consideration the promulgation of an Executive Directive in order to guide the agencies in their application of the Constitutional provision."

No thorough study has been made of the policies, regulations or practices which may be in effect in other federal agencies concerning the tender of gifts by foreign governments to their respective officers and employees or members of their families.

A thorough interdepartmental study may reveal it to be desirable that the Congress enact legislation, pursuant to the original Constitutional reference, which would assist in bringing about consistency in practice throughout the Executive Branch.

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For Action

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Recommendations

1. That an interdepartmental study group be established to be chaired by the representative of the Department of State, and to include among its membership representatives of the Departments of Treasury, Defense, Justice, Agriculture, Commerce, of the Special Assistant to the President for Personnel Management, and of the Bureau of the Budget.
2. That the group obtain full information on the policies and practices of the Federal Agencies most frequently affected by this problem, analyze this information from the point of view of consistency and legality, and prepare appropriate recommendations, including, if needed, proposals for legislative action, for Cabinet consideration.
3. That the group finish its work by October 1, 1958.

Concurrences:

The Attorney General

Annex A

Department Circular 277 of November 13, 1957

CABINET PAPER

For Action

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ANNEX A

DEPARTMENT CIRCULAR NO. 277
November 13, 1957

SUBJECT: Acceptance of Gifts from Foreign Governments or Foreign Government Officials

1. There is attached to this circular a compilation of the applicable law and regulations pertaining to gifts from foreign governments, or from officials thereof acting in their official capacity, to members of the Department and of the Foreign Service. This circular constitutes a statement of policy designed to afford guidance respecting the Department's interpretation of these provisions.
2. Where under the circumstances there is any indication whatsoever that such a gift was given with any improper intent, such as to gain influence, it should not be accepted. Where delivery of such a gift was made under circumstances rendering refusal impossible, the gift should be promptly returned to the donor.
3. Subject to the foregoing, it is the view of the Department that the following provisions of the law and regulations are to be interpreted with due regard for the principal "de minimis non curat lex" - the law does not concern itself with things which would universally be regarded as too unimportant to come within its scope. Accordingly, where there is no indication of improper interest, and refusal or return would be offensive and might injure good international relations, such a gift may be received. If it has only minor intrinsic value, such as a photograph or other like memento or souvenir, it may be retained. In case of any question or doubt, a ruling should be obtained from the Office of Protocol.
4. If gifts accepted from foreign governments or officials go beyond the foregoing, they should be delivered into the custody of the Department of State, through the Office of Protocol, which will then determine whether such gifts shall be returned to the donees or kept by the Department for later disposition in accordance with law. Return will not be permitted in the case of gifts of such nature or value that, irrespective of the actual intent of the giver, it could reasonably be inferred by anyone that the gift would, in fact, establish influence or constitute an added payment for services already included in the employment relationship of the recipient to the United States Government.
5. Gifts to close relatives of members of the Department or the Foreign Service should be treated in the same way as gifts to such members.
6. In general, members of the Department and of the Foreign Service shall, within the bounds of courtesy and good judgment, discourage the bestowal of gifts by foreign governments or officials upon themselves or their close relatives. Most foreign governments already understand that members of the Department and the Foreign Service do not accept foreign decorations and do not attempt to give them. The practice of politely and firmly declining decorations if offered should be continued.
7. This circular is intended merely to clarify existing regulations and should not be considered as repealing any of them.

Attachment:

Compilation of Law and Regulations
Pertaining to Acceptance of Gifts
from Foreign Governments or Officials

(S)

State - FD, Wash., D. C.

CABINET PAPER

For Action

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LAW AND REGULATIONS

Article 1, Section 9, Clause 8 of the Constitution reads as follows:

"No Title of Nobility shall be granted by the United States: and no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State."

The Act of January 31, 1881, 5 U.S.C. 115, provides:

"Any present, decoration, or other thing, which shall be conferred or presented by any foreign government to any officer of the United States, civil, naval, or military, shall be tendered through the Department of State, and not to the individual in person, but such present, decoration, or other thing shall not be delivered by the Department of State unless so authorized by act of Congress."

By an Executive Order dated April 13, 1954, the President directed that after that date no request should be submitted for the consent of Congress for anyone, other than retired personnel, to accept gifts, decorations, awards or any other thing tendered to them by a foreign Government.

It is provided in 5 U.S.C., Section 115a that:

"The Secretary of State is directed to furnish to the Seventy-fifth Congress and to each alternate Congress thereafter a list of those retired officers or employees of the United States for whom the Department of State under the provisions of section 115 of this title, is holding decorations, orders, medals, or presents tendered them by foreign governments."

The acceptance of gifts by officers and employees of the Foreign Service is governed by Section 1002 of the Foreign Service Act of 1946, as amended (22 U.S.C. 804), providing:

"An Officer or employee of the Service shall not ask or, without the consent of the Congress, receive, for himself or any other person, any present, emolument, pecuniary favor, office, or title from any foreign government. A chief of mission or other principal officer may, however, under such regulations as the President may prescribe, accept gifts made to the United States or to any political subdivision thereof by the Government to which he is accredited or from which he holds an exequatur."

It is further provided in 1 FSM IV 625.1 and 625.2, as follows:

"625.1 No American employee shall accept any decoration, gift or emolument of any kind from any foreign sovereign government, or from any state, province, or municipality of any foreign government, or from any governmental or semi-governmental agency, or from any international organization of states, notwithstanding the fact that the United States is a participant in such international organization. Moreover, to assure absolute equality and uniformity in this regard, no American employee of the Foreign Service shall ever wear any foreign decoration while serving in such capacity.

"625.2 No American employee, nor any person on behalf of such employee, shall petition the Congress of the United States for legislative permission to receive any foreign decoration, gift or emolument described in section 625.1."

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It is also provided in pertinent part in Section 1021(a) of the Foreign Service Act of 1946, as amended (22 U.S.C. 809):

"The Secretary of State may accept on behalf of the United States gifts made unconditionally by will or otherwise for the benefit of the Foreign Service or for the carrying out of any of its Functions. * * *"

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For Action

REF ID: A341938
PSC 8-096-2**CABINET PAPER—PRIVILEGED**

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CP - 58-80

May 14, 1958

The White House
Washington

Extra Copy for O.S.C.

THE CABINET

Gifts from Foreign Governments

For consideration of the Cabinet, attached is a paper which will
be presented by the Secretary of State.

This paper, which bears the concurrence of the Attorney General,
proposes the establishment of an ad hoc interdepartmental group to
recommend actions to help insure consistent policy and practice with
respect to this problem throughout the Executive Branch.

The concurrence of the Cabinet and the approval of the President
are sought for the recommendations in the attached paper.

*Approved
16 May*

Maxwell M. Rabb
Secretary to the Cabinet

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For Consideration

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CP - 58-80

May 14, 1958

The White House

Washington

THE CABINET

Gifts From Foreign Governments

Problem

To determine how a uniform policy and uniform procedures may best be achieved for the disposition of the various categories of gifts which may be tendered by foreign governments to officers of the Executive Branch of the United States Government.

Discussion

The Constitution prohibits officers of the United States from accepting gifts "of any kind whatever" from foreign governments "without the Consent of the Congress."

An 1881 statute provides that any such gift "or other thing" shall be tendered through the Department of State and shall not be delivered to the recipient unless authorized by Act of Congress. This statute is applicable to Government Officers but not to members of their families.

In 1902 the Acting Attorney General of the United States rendered an opinion to the Secretary of State that "even a simple remembrance of courtesy... like the photographs in this case" falls within the Constitutional prohibition (24 Op. Att. Gen. 116, 117). A fourth class clerk in the Post Office Department is an officer of the United States within the meaning of this prohibition (27 Op. Att. Gen. 219).

The policy of the Department of State regarding such gifts has been recently set forth in Departmental Circular 277 of November 13, 1957 (which, with its attachment, forms Annex A to this paper).

This policy statement specifies that "the ... provisions of the law and regulations are to be interpreted with due regard for the principle 'de minimis non curat lex' - the law does not concern itself with things which would universally be regarded as too unimportant to come within its scope. Accordingly, where there is no indication of improper interest, and refusal or return would be offensive and might injure good international relations, such a gift may be received. If it has only minor intrinsic value, such as a photograph or other like memento or souvenir, it may be retained."

The Chairman of the Committee on Government Operations of the U. S. Senate has written the President stating that "there should be unanimity of procedure and policy throughout the Executive Branch, and I recommend for your consideration the promulgation of an Executive Directive in order to guide the agencies in their application of the Constitutional provision."

No thorough study has been made of the policies, regulations or practices which may be in effect in other federal agencies concerning the tender of gifts by foreign governments to their respective officers and employees or members of their families.

A thorough interdepartmental study may reveal it to be desirable that the Congress enact legislation, pursuant to the original Constitutional reference, which would assist in bringing about consistency in practice throughout the Executive Branch.

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For Consideration

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- 2 -

Recommendations

1. That an interdepartmental study group be established to be chaired by the representative of the Department of State, and to include among its membership representatives of the Departments of Treasury, Defense, Justice, Agriculture, Commerce, of the Special Assistant to the President for Personnel Management, and of the Bureau of the Budget.
2. That the group obtain full information on the policies and practices of the Federal Agencies most frequently affected by this problem, analyze this information from the point of view of consistency and legality, and prepare appropriate recommendations, including, if needed, proposals for legislative action, for Cabinet consideration.
3. That the group finish its work by October 1, 1958.

Concurrences:

The Attorney General

Annex A

Department Circular 277 of November 13, 1957

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For Consideration

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ANNEX A

DEPARTMENT CIRCULAR NO. 277
November 13, 1957

SUBJECT: Acceptance of Gifts from Foreign Governments or Foreign Government Officials

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For Consideration

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- 2 -

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CABINET PAPER

For Consideration

* SENDER WILL CHECK CLASSIFICATION TOP AND BOTTOM			
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**CENTRAL INTELLIGENCE AGENCY
OFFICIAL ROUTING SLIP**

TO	NAME AND ADDRESS		INITIALS	DATE
1	MR. HOUSTON via DD/S <i>JYL</i>			
2				
3				
4				
5				
6				
	ACTION	DIRECT REPLY	PREPARE REPLY	
	APPROVAL	DISPATCH	RECOMMENDATION	
	COMMENT	FILE	RETURN	
	CONCURRENCE	INFORMATION	SIGNATURE	

Remarks:

FOLD HERE TO RETURN TO SENDER

FROM: NAME, ADDRESS AND PHONE NO.		DATE
O/DCI 20 May 58		
Approved For Release 2002/05/06 : CIA-RDP62-00631R000300040007-9		
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STATINTL
MEMORANDUM FOR: THE DIRECTOR

The interdepartmental study group to recommend actions to insure consistent policy and practice throughout the Executive Branch regarding Gifts from Foreign Governments will be chaired by Loftus E. Becker, State Department Legal Adviser.

Lofty fully appreciates our interest in this problem and says he will be delighted to have Larry Houston sit in for us as an observer. He will notify Larry when the study group meets.

[REDACTED]
H. Gates Lloyd
Acting Deputy Director
(Support)

19 May 1958
(DATE)

cc: ✓ Mr. Houston

FORM NO. 101 REPLACES FORM 10-101
1 AUG 54 WHICH MAY BE USED.

(47)

TRANSMITTAL SLIP		DATE <u>16 September 1958</u>
TO: <u>Mr. Houston</u>		
ROOM NO. <u>221</u>	BUILDING <u>East</u>	
REMARKS: I have discussed the attached memorandum with Mr. Bilder who thinks it is a good suggestion. He advises that they have completely dropped the idea of handling this matter by Exec. Order. They feel this would involve too many potential restrictions.		
FROM: [REDACTED]		
ROOM NO. <u>226</u>	BUILDING <u>East</u>	EXTENSION [REDACTED]

FORM NO. 241
1 FEB 55

REPLACES FORM 36-8
WHICH MAY BE USED.

GPO : 1957-O-439445

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